

PIONEER RAILROAD EQUIPMENT CO., LTD
1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

October 26, 1999

Surface Transportation Board
Recordation Unit
1925 "K" Street, N.W.
Washington, D.C. 20423

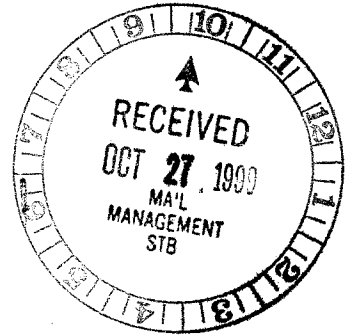
RECORDATION NO.

22503

FILED

NOV 1 '99

1-15 PM



Dear Sir or Madam:

Enclosed for recording, is a Railcar Usage Agreement, covering the use of certain specified railcars of Pioneer Railroad Equipment Co., LTD., by the New York & Greenwood Lake Railway. Also enclosed is a check in the amount of \$26.00, as requested, and a copy of the lease, which I ask that you file-stamp and return to me.

I appreciate your assistance with this matter. If you have any questions, please do not hesitate to call me.

Sincerely,

Jonathan L. Kazense

Jonathan L. Kazense
General Counsel

Enclosures.

RAILCAR USAGE AGREEMENT

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THIS RAILCAR USAGE AGREEMENT ("Agreement") is entered into this 25th day of October, 1999, by and between PIONEER RAILROAD EQUIPMENT CO., LTD., an Iowa corporation, as owner, whose address is 1318 S. Johanson Road, Peoria, Illinois 61607 (herein also "PREX"), and NEW YORK & GREENWOOD LAKE RAILWAY, a New Jersey corporation, as User, whose address is Erie Railroad Station P.O. Box 106, Glen Ridge, New Jersey 07028 (herein also "NYGL"); WITNESSETH THAT:

WHEREAS PREX is the owner of certain railcars hereinafter described (the "Cars"); and

WHEREAS NYGL is desirous of using said Cars for the purpose of reducing its car hire expenses and protecting the loading requirements of its customers;

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. THE CARS. PREX shall supply NYGL up to twenty (20) 70-ton, 50-foot boxcars, of any type PREX shall have available (the "Cars"). Said Cars are more fully described on Exhibit A, attached hereto and made a part hereof by reference.

2. TERM. This Agreement, with respect to each Car, shall commence upon the delivery of such Car to NYGL and shall terminate on December 31, 2004, unless terminated sooner as provided herein. This Agreement shall remain in full force and effect until it shall have been terminated as to all of the Cars as provided herein.

3. COMPENSATION AND CAR HIRE.

A. The parties agree that the Cars will be free of all car hire charges while on NYGL's railroad tracks ("on-line"). PREX shall collect and retain as part of its compensation for the use of the Cars, all car hire (including time and mileage) payments made by other railroad companies for their use and handling of the Cars ("Car Hire Payments").

B. NYGL will not grant or allow any reclaim or any empty mileage; enter into any marketing rate agreement in which car hire rates are established; or permit any other reduction in Car Hire Payments without PREX's prior written consent. PREX shall have the absolute authority in its sole discretion to negotiate and enter into or refuse to enter into any bilateral agreement with any railroad with respect to storage charges, mileage charges, car hire rates covering the Cars or any other matter affecting the amount of revenue which the Cars are able to earn. NYGL does not have the right to deprescribe the Cars.

C. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which a Car is available for use hereunder (commencing as of the date such Car is delivered pursuant to Section 6 of this Agreement). "Utilization"

with respect to any period, shall mean the percentage of Car Hours which a particular car is off-line (not on NYGL tracks).

D. During the Term of this Agreement, NYGL shall provide PREX with its UMLER "passkey" for the purposes of establishing and maintaining a pool assignment to allow for the reverse routing of the Cars to NYGL. If at any time NYGL changes its passkey, it will immediately notify PREX of the new passkey. Should NYGL fail to comply with its obligations under this Section 3(D), NYGL shall promptly pay any additional freight charges due by reason of the Cars being routed to any other destination.

4. CONDITION OF THE CARS. THE CARS SHALL BE DELIVERED IN INTERCHANGE CONDITION. PREX DISCLAIMS ALL OTHER WARRANTIES, BOTH EXPRESSED AND IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR INTERFERENCE. IN NO EVENT SHALL PREX BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, PROFITS OR USE.

5. PRIORITY LOADING. NYGL shall load, or order the loading of, all the Cars on its railroad tracks prior to loading, or ordering the loading of any other boxcars, with the exception of the 10 RBL Boxcars being sold to NYGL by PREX, in a contemporaneous transaction (or any other cars later purchased from PREX by NYGL). The priority loading granted the Cars as herein provided is the essence of this Agreement, and, upon proper application, PREX shall be entitled to a decree against NYGL requiring specific performance of NYGL's covenant to grant such priority loading. In the event that PREX determines, based upon its review of the records, that NYGL is not complying with the intent of the priority loading provisions of this Section 5, NYGL shall be liable for and remit to PREX an amount equal to the number of freight cars loaded in violation of this Section 5, multiplied by the product of the average hourly car hire and mileage earnings for the Cars and the trip time and distance for the cars loaded in violation. NYGL shall provide all provide records of all loadings and movements to PREX, promptly upon request.

6. DELIVERY AND RETURN. Pioneer Railroad Equipment Co., Ltd. (PREX) shall cause said Cars to be delivered to NYGL at Garfield, New Jersey. The cost of moving the Cars to Garfield shall be borne by PREX. At the termination of this Agreement the Cars shall be returned by NYGL to PREX by interchanging the Cars at Garfield, according to the routing instructions provided by PREX. Said Cars shall be returned empty and clean. NYGL shall not bill or receive any switch charge, interline settlement, or any other transportation charge of any kind or description in connection with the delivery, return, or use of the Cars on its line; nor shall NYGL be entitled to any compensation or reimbursement for car cleaning.

7. TAXES. Until such time as the Cars are returned to PREX, NYGL shall be responsible for the payment and filing of all any property and ad valorem taxes levied or imposed upon the Cars. NYGL further agrees to assume responsibility for and to pay any applicable state sales, use or similar taxes resulting from the use of the cars.

8. RECORD-KEEPING. PREX shall perform all record-keeping functions related to the use of the Cars by NYGL and other railroads in accordance with the AAR Interchange Rules and AAR Code of Car Service and Code of Car Hire Rules - Freight. Correspondence from railroads using such Cars shall be addressed to PREX at its address as set forth in the preamble to this Agreement.

9. COMMODITY AND USE. It is understood that the aforesaid Cars are to be used in general commodities services only, and shall not, under any circumstances, be used for shipment of any hazardous or special commodity, without the prior written consent of PREX. NYGL shall use reasonable care to assure that said Cars are not damaged or misused, and shall not remove any fixture, attachment or part therefrom. NYGL shall not add or attach any part, attachment or fixture to any or all of said Cars, without the prior written approval of PREX. Whether or not such approval is granted, any attachment, fixture or part added to any of the Cars during the Term of this Agreement shall become the sole and exclusive property of PREX, and NYGL shall have no claim therefor. Said cars shall bear "ALAB" Reporting Marks and numbers, and NYGL shall take all reasonable steps to assure that such Marks and numbers remain clear and legible at all times.

10. MAINTENANCE.

A. PREX shall pay the costs of all off-line repairs to the Cars, excluding door repairs, performed by another railroad and billed through the AAR process.

B. NYGL shall use its best efforts to perform preventative maintenance on the doors to the Cars, including inspection of tracks, straightening and greasing, welding punctures, and securing locking devices.

C. Upon the request of PREX, and at PREX's sole expense, NYGL may make running repairs in accordance with the Interchange Rules at an hourly labor rate equal to 25% of the then current AAR rate. Materials shall be charged in accordance with current AAR Interchange Rules. If NYGL performs repairs to the Cars in accordance with this Section 10, NYGL shall process charges for repairs and furnish PREX with records of such repairs made to the Cars in accordance with AAR Office Manual Rule 112. NYGL shall not deduct repair charges from revenues received for the Cars, but shall submit repair charges separately from all other charges.

11. TERMINATION. PREX may, at its sole discretion, terminate this Agreement as to all or any portion of the Cars covered by this Agreement, at any time, with or without cause, upon seven (7) days written notice. In addition, if utilization of the Cars falls below 80% for two (2) consecutive months, or if NYGL fails or refuses to comply with any part of this Agreement, PREX may terminate the Agreement as to all or any number of the Cars covered by this Agreement, and such termination shall take effect immediately upon notice.

12. STORAGE. It is understood and agreed that at the end of the Term, NYGL shall, upon request, store said cars for up to 60 days, at no cost or expense to PREX

13. RENEWAL. This Agreement shall not automatically renew for any additional term, unless the parties shall so agree in writing.

14. **INDEMNIFICATION**. NYGL agrees to indemnify and hold PREX harmless from and against any loss, damage, claim, action, cause of action, liability, penalty, fine, judgment, cost or expense of whatsoever nature, including, but not limited to, court costs and attorney fees and expenses (collectively "Loss"), which may result from, arise out of, or in any way be connected with the use, maintenance, operation, presence, movement, loading or unloading of the Cars, if the act or omission giving rise to such Loss occurs during the term of this Agreement, or any renewal thereof. This Section is intended to cover, but not be limited to, damage claims, FELA claims, derailments, crossing or other vehicular accidents, and any claim brought by any state, federal, or local governmental agency or instrumentality under any environmental protection statute, rule, regulation, ordinance, order or other mandate (including the Comprehensive Environmental Response Compensation and Liability Act).

15. **INSURANCE**. The parties agree that the Cars shall constitute foreign line rolling stock while on NYGL tracks. NYGL shall provide PREX, promptly upon the execution of this Agreement, a Certificate of Insurance certifying to the effectiveness of foreign line rolling stock coverage in an amount of not less than \$500,000. NYGL shall maintain such coverage during the term of this Agreement, and shall provide PREX with a current certificate prior to the expiration of the previous certificate.

16. **NOTICE**. Any Notice required or permitted to hereunder shall be by personal delivery, facsimile transmission, or by certified mail, postage fully prepaid and return receipt requested, and shall be addressed to the respective parties at the addresses recited in the preamble hereinabove, or at such other address as the parties may from time to time give notice of. Such Notice shall be effective when received, refused, or returned by the postal service as undeliverable.

17. **SURVIVAL**. The obligations included in Sections 4, 6, 7, 12, and 14, and any other obligation or liability accrued during the term of this Agreement shall survive the termination of this Agreement, and remain as if the Agreement were still in full force and effect.

18. **BINDING EFFECT AND ASSIGNMENT**. This Agreement shall be binding upon the parties and their respective officers, directors, employees, agents, insurers, attorneys, successors and assigns, Provided, however, that this Agreement may not be assigned, in whole or in part, by NYGL, except upon the written consent of PREX. This Agreement may be assigned by PREX.

19. **CONSTRUCTION OF AGREEMENT**. This Agreement constitutes the entire Agreement between the parties with respect to the Cars identified herein and supersedes any prior agreement, oral or written. No modification, amendment or waiver shall have any force or effect unless it is in writing and signed by both parties. Unless otherwise expressly provided or unless the context requires otherwise, words and terms importing the singular number shall mean and include the plural number and vice versa. The provisions of this Agreement were negotiated by the parties, and this Agreement shall not be construed in favor of or against any party by virtue of the fact that one or the other drafted any part or all of this Agreement.

20. CHOICE OF LAW; CHOICE OF FORUM. This Agreement shall be deemed to have been executed in Peoria, Illinois, and shall be construed and enforced in accordance with the laws of the State of Illinois, without regard for the principles of conflicts of laws, and any disputes involving this Agreement shall be filed and heard in the Circuit Court of Peoria County, Illinois.


21. RECORDATION. NYGL shall execute, from time to time, such documents as PREX may reasonably request in order to record its interest in the Cars with the Surface Transportation Board, and/or such other offices or bodies as may be desirable.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above:

PIONEER RAILROAD EQUIPMENT CO., LTD.

By 
Name: Leigh H. Brubaker
Its: CEO

NEW YORK & GREENWOOD LAKE RAILWAY CO.

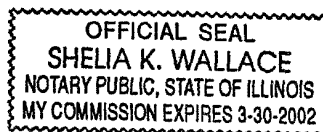
By 
Name: James R. White
Its:

STATE OF ILLINOIS)
) SS
COUNTY OF Peoria)

The undersigned authority, a Notary Public in and for said County and State, hereby certifies that Russ H. Brenkman of Pioneer Railroad Equipment Co., Ltd., signed the foregoing instrument and, being known to me, acknowledged before me this day that, being informed of the contents of said instrument, he signed as such officer and with full authority, executed the same voluntarily for and as the act of said corporations.

Given under my hand and official seal this 25th day of October, 1999.

Shelia K. Wallace
Notary Public



STATE OF New Jersey)
) SS
COUNTY OF Essex)

The undersigned authority, a Notary Public in and for said County and State, hereby certifies that JAMES R. WILSON of New York & Greenwood Lake Railway Co. signed the foregoing instrument and, being known to me, acknowledged before me this day that, being informed of the contents of said instrument, he signed as such officer and with full authority, executed the same voluntarily for and as the act of said corporations.

Given under my hand and official seal this 20th day of October, 1999.

June G. Grasso
Notary Public

JUNE G. GRASSO
NOTARY PUBLIC OF NEW JERSEY
Expires July 31, 2001

EXHIBIT A

CARS INCLUDED IN RAILCAR USAGE AGREEMENT

<u>TYPE OF CAR</u>	<u>NUMBER</u>
50 ft. BOXCAR	ALAB #1403
"	ALAB #1405
"	ALAB #1411
"	ALAB #1428
"	ALAB #1436
"	ALAB #5901
"	ALAB #5902
"	ALAB #5922
"	ALAB #5933
"	ALAB #5938